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December 23, 2022

**Via ECF**

The Honorable Valerie E. Caproni, U.S.D.J.  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, New York 10007

Re: *Sarr v. Sinergia, Inc. et al.*  
Case No.: 1:22-cv-03610 (VEC) (RWL)

Dear Judge Caproni:

I am counsel to Plaintiff and write to respectfully request that the Court compel Defendants' Rule 68 Offer be reinstated given that they improperly withdrew their November 22, 2022, offer the following day.

FRCP 68 allows a party 14 days to consider and accept an offer. Such offer is not revocable. Only in exceptional circumstances can a Rule 68 offer be revoked, such as mistake. See *Penn-Star Ins. Co. v. Maint. Asset Mgmt.*, 17-CV-504, No. 17 (E.D.N.Y. Sep. 24, 2019); *Cesar v. Rubie's Costume Co.*, 219 F.R.D. 257, 261 (E.D.N.Y. 2004). See also *Fisher v. Stolaruk Corp.*, 110 F.R.D. 74, 76 (E.D.Mich.1986).

Due to Defendants' invalid withdrawal, Plaintiff was never given the required period to properly consider Defendants' proposed Rule 68 offer. As such, we respectfully request that the Court reinstate Defendants' Rule 68 offer and allow Plaintiff another 13 days to consider the offer.

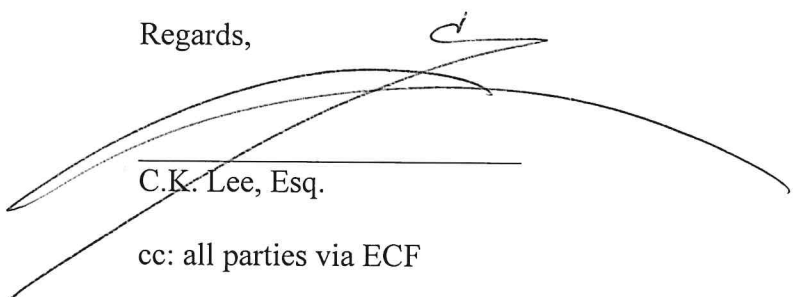
While Defendants have imputed sinister motivations to Plaintiff's investigations, the reality is much more prosaic. My firm has a Paralegal, Ms. Jenie Mariani, designated to investigate every class lawsuit prior to filing. The purpose, for every case, is to ascertain the strength and weaknesses of the alleged claims, and whether there are witnesses who are willing to come forth to support the claims. Sometimes there are, sometimes there are not. When Defendants' Rule 68 offer was received, I asked my paralegal Ms. Mariani whether we had investigated the claim when we first filed. If we had investigated and there were many potential witnesses willing to testify, it would strengthen Plaintiff's claims. If there were no witnesses, Plaintiff's claims may be more risky. When I was informed that we had never conducted third-party investigations on Plaintiff's claims, I was disturbed and intended to "catch-up" so that we may properly ascertain the strength of the Plaintiff's claims.

Defendants' assertion that Plaintiff's counsel is orchestrating a class lawsuit to the detriment of Plaintiff is inaccurate. In a recent case with Judge Parker, our client was adamant not to settle individually. However subsequently, the case was able to be resolved individually for higher value. Not immediately accepting an individual settlement is a completely valid litigation strategy. However, my firm has frequently urged individuals to settle on an individual basis where timely and appropriate. Here, Plaintiff was not yet even given sufficient time to consider before the offer was rescinded. Typically, delivery of class notices frequently will instigate settlement discussions. The Court's judicious decision conditionally certifying the collective class was a factor in compelling Defendant's initial offer. The subsequent delays in the provision of the class list since October 4, 2022, when the Court conditionally certified the collective class, will certainly be factors that Plaintiff will consider. Moreover, Defendant's counsel has reiterated to me on numerous occasions that Defendants are a non-profit with limited means. There would be no purpose to engaging in protracted litigation against a defendant with limited funds.

In an attempt to mitigate the Court's attention, I had reached out to Defendants' counsel to further discussions but have been informed that they would not be able to meet to discuss until early January 2023. If, in the alternative, the Court believes that reinstating the Rule 68 offer is not appropriate, I would kindly request that the Court refer the parties to mediation.

I thank the Court for Its kind attention and wish the Court and Its staff a hearty, healthy and happy holiday season.

Regards,



C.K. Lee, Esq.

cc: all parties via ECF